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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 SECURITIES AND EXCHANGE
COMMISSION, No. C-08-4238 EMC

Plaintiff,

11 v.
12 RAJ P. SABHLOK and MICHAEL C.
PATTISON.

ORDER RE ADMISSIBILITY OF RESTATEMENT

(Docket No. 253)

Defendants.

16 On August 16, 2010, Defendant submitted an unsolicited letter further arguing why the
17 Restatement should be excluded from evidence. The Court treats the letter as yet another request for
18 reconsideration of its earlier ruling that the Restatement is admissible subject to certain redactions.
19 As such, the motion fails to comply with Civil Local Rule 7-9 and is therefore **DENIED**.

20 Even if the Court were to reach the merits of the motion, it is **DENIED**. The SEC correctly
21 points out that there is language in *Paddack v. Dave Christensen, Inc.*, 745 F.2d 1254 (9th Circ.
22 1984) that support this Court’s conclusion that the Restatement is admissible as a business record.
23 As the Ninth Circuit noted in *Paddack*, “Although a financial statement audit is based in part on
24 hearsay, it is generally admissible as a business record of the audited entity under Fed. R. Evid.
25 803(6).” *Id.* at 1257, n.3. Indeed, the reliability of the audit records in *Paddack* stand in stark
26 contrast to that of the Restatement in the instant case. The records in *Paddack* were prepared for
27 purposes of litigation and were aligned with the interests of the sponsoring party – raising a risk that
28 they were self-serving. In contrast, as previously noted, the Restatement in the case at bar appears to

1 be more of a statement *against* the interest of Embarcadero. In any event, Defendant has failed to
2 demonstrate why those portions of the Restatement deemed admissible are unreliable. Furthermore,
3 this Court's ruling is consonant with Judge Ware's ruling in *SEC v. Jasper*, No. C-07-6122-JW, Slip
4 Op. (July 21, 2010) attached to the SEC's response.

5 Finally, the Court finds that in addition to Fed. R. Evid 803(6), the portions of the
6 Restatement deemed admissible herein would be admissible under the residuary hearsay provisions
7 of Fed. R. Evid. 807.

8 This order disposes of Docket No. 253.

9
10 IT IS SO ORDERED.

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12 Dated: August 26, 2010


13 EDWARD M. CHEN
14 United States Magistrate Judge